

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 921 of 1998

in

SPECIAL CIVIL APPLICATION No 4949 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAYESH TRADING COMPANY

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Appellant

MR PG DESAI GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 19/08/98

ORAL JUDGEMENT

#. Admitted. Mr. Prashant G. Desai, Government
Pleader appears and waives service of notice of

admission. In the facts and circumstances of the case, LPA is taken for final hearing today.

#. This appeal is filed against the order passed by the learned Single Judge in S.C.A.4949 of 1998 summarily dismissing it on 20th July,1998.

#. The case of the appellant petitioner was that he despatched goods i.e. 10 metric tone groundnut in truck bearing registration no.GJ-11-4-9421 along with necessary bill, gate pass etc. to Chandraprabhu Trading Company, Sangli (Maharashtra) on May 8, 1998. On May 11,1998 the truck was detained at Ahawa check post inter alia alleging that the petitioner was carrying goods illegally in the State of Maharashtra. The goods were also seized. On 12-5-98, the petitioner approached the District Supply Officer (for short 'DSO') for release of goods as well as truck. The DSO passed an order on 13th May,1998 directing the petitioner to give bank guarantee to the extent of Rs.2.5 lacs towards the goods in question. As regards the truck, the DSO directed the petitioner to furnish undertaking on non judicial stamp paper of Rs.20/- that would keep the truck in plying condition and he would not sale / transfer or alienate it during pendency of the proceeding. It appears that being aggrieved by the order passed by DSO, the petitioner approached the Collector in which grievance was made that the DSO has committed an error in directing the petitioner to furnish bank guarantee of Rs.2.5 lacs for goods, as the goods were worth Rs.1.85 lacs. It is case of the petitioner that not only his appeal for reduction of bank guarantee from Rs,.2.5 lacs to Rs.1.85 lacs in respect of goods, was dismissed but without issuing any notice and without affording opportunity and without complying with principles of natural justice, the Collector directed the petitioner to furnish bank guarantee of Rs.2.5 lacs even in respect of truck in question. Being aggrieved by that order passed by the Collector, the petitioner approached this court by filing the above petition. The learned Single Judge was of the view that a decision taken by the Collector could not be said to be illegal or contrary to law particularly in view of the fact that there were suspicious circumstances as mentioned in the order passed by the Collector. This appeal is directed against an order passed by the learned Single Judge.

#. We have heard Mr.Pahwa, learned counsel for the appellant and Mr.P.G.Desai, learned Government Pleader for respondents.

#. Mr.Phawa, contended that the goods seized were worth Rs.1.85 lacs and the DSO as well as the Collector have committed an error of law in directing the appellant to furnish bank guarantee of Rs.2.5 lacs. The learned Single Judge has committed the same illegality in confirming those orders.

#. It was further submitted that in appeal filed by the appellant, against the order passed by the DSO, the Collector without complying with the principles of the natural justice, could not have directed him to furnish bank guarantee of Rs.2.5 lacs in respect of truck. To recall, the order passed the DSO did not direct the appellant to furnish bank guarantee for release of truck. He was required to give an undertaking in terms of order passed by the DSO. That order passed by DSO could not have been interfered with and that too without following principles of natural justice.

#. Mr.Desai, on the other hand, supported the order. He submitted that the order passed by Collector is based on evidence. An affidavit in reply was filed by Mr.K.P.Patel, Collector. It was urged that there were suspicious circumstances, which obliged the Collector to pass the order and when the learned Single Judge has not interfered with the said order, this court may not disturb the order.

#. We do not see substance in the first contention and reject it.

#. So far as the second contention is concerned, in our opinion, there is considerable force in the argument of Mr.Pahwa, learned counsel for the appellant. The appeal was filed by the appellant who was aggrieved by the order passed by the DSO. It may be that on enquiry, the Collector found certain suspicious circumstances which prompted him to take more drastic action but then principles of natural justice require that before passing such an order and taking action on that basis, he ought to have afforded opportunity of hearing. An order passed without following principles of natural justice cannot be upheld.

##. The learned counsel for the appellant submitted that the appellant is not interested in getting the goods released by furnishing bank guarantee of Rs.2.5 lacs. It is open to him to approach the Collector and make such request. If the appellant does not want to get the goods released, obviously the authority cannot compel him to furnish bank guarantee and get the goods released.

##. If the appellant wants to get the truck released, he may approach the Collector. Since the order passed by the Collector is set aside on the ground of violation of the principles of natural justice, it is directed that the Collector will pass a fresh order after affording due opportunity of hearing to the appellant.

##. We may only state that we express no opinion on merits with regard to ownership of truck in question. It is for the Collector to pass an appropriate order on its merits after hearing appellant.

##. The appeal is accordingly allowed to the extent indicated above. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar,J.)

Date : 19-8-1998 (A.M.Kapadia, J.)
(KPP)